

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment**
(DLS Control No. 14-222)

Overview and Legal and Fiscal Impact

These re-proposed regulations authorize the Maryland Department of the Environment to allocate more groundwater to public drinking water systems in Carroll, Frederick, and Washington counties than would have been authorized by previous departmental policies. The regulations incorporate, by reference, a guidance document, which sets forth the methodology for determining whether additional groundwater can be allocated to a water system in a justifiable and sustainable manner. Additionally, the regulations codify existing statewide policy as it relates to such groundwater allocations.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of the Environment:

Water Management: Water Appropriation or Use: COMAR 26.17.06.01, and .04-.09

Legal Analysis

Background

Prior to 2008, State policy limited the amount of groundwater that could be allocated to a water system to the amount of water that is recharged on lands owned or controlled by the water supplier. The groundwater recharge policy required that, in areas where the amount of groundwater recharge per acre is not sufficient, higher density developments must incorporate sufficient open space areas or otherwise restrict water use-associated land located outside of the developed areas but still within the aquifer recharge area to ensure that the groundwater recharge is not exceeded by the water withdrawal. This groundwater recharge policy was criticized as encouraging sprawl by limiting the amount of water available to municipalities for growth within town limits.

Chapter 197 of 2008 authorized the department, under specified circumstances, to give priority for groundwater appropriations and use in Carroll, Frederick, or Washington counties to a public water system that provides water to municipal corporations or priority funding areas. Chapter 197 applies to counties located in the central “Piedmont” portion of Maryland, which includes areas that rely solely on groundwater from water table aquifers for water supply.

In response to Chapter 197, the department issued the guidance document incorporated by reference in the regulations, which provides “a systematic methodology for determining whether additional groundwater can be allocated to a water system in a justifiable and sustainable manner that does not negatively impact the water resource or the current or future rights of other property owners to use ground water associated with their properties.” The guidance document directs public water systems to include specified data, analyses, and corroborating documentation in the priority allocation application.

The regulations were previously published in the *Maryland Register* on November 1, 2013, but were not adopted. Substantive changes were made to both the regulations and the guidance document, which are included in this re-proposal.

Summary of Regulations

Regulation .01 under COMAR 26.17.06 adds definitions for the following terms: “public water system”; “7Q10”; “water audit”; “water conservation”; and “water supply capacity management plan.” Regulation .05 codifies existing policy relating to requiring water audits, water supply capacity management plans, water conservation plans, and estimates of distribution system leakage. Additionally, Regulation .05 authorizes the department to require specified public water systems to conduct evaluations in accordance with the guidance document. Regulation .06 requires the department, in determining the reasonableness of a proposed appropriation or use, to consider, among other things, the ability of a well or spring to sustainably yield the requested amount of the appropriation and whether specified appropriations are providing groundwater to a municipality or priority funding area (PFA). Regulation .06 also codifies the department’s existing policy for allocations to water systems using unconfined aquifers. Regulations .07, .08, and .09 are renumbered only.

Regulation .04 incorporates, by reference, *Application for Water Allocation: Guidance Document for Public Water Systems Providing Groundwater to Municipal Corporations or Priority Funding Areas in Carroll, Frederick, and Washington Counties (June 2014)*. Changes to this guidance document from the version previously proposed generally include clarifications regarding the consideration of water supply allocations in PFAs established prior to January 1, 2000; greater required consistency with local water, sewer, planning, and zoning documents; and criteria to consider before approving additional allocations.

Legal Issue

The regulations present no legal issue of concern

Statutory Authority and Legislative Intent

The department cites §§ 5-101, 5-204, and 5-501 through 5-516 of the Environment Article as authority for the regulations. Specifically, § 5-508 requires that an appropriation or use of any waters of the State be in conformity with any regulation the department prescribes concerning any construction, change, addition, or repair. Additionally, § 5-501 authorizes the department, under specified circumstances, to give priority for groundwater appropriations and use in Carroll, Frederick, or Washington counties to a public water system that provides water to specified municipal corporations or to specified priority funding areas. Additionally, this section sets forth, in part, the policy relating to appropriation and use of the groundwater in the State.

This authority is correct and complete. The re-proposed regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no fiscal impact on the State or local governments but may ultimately reduce expenditures for local governments within Carroll, Frederick, and Washington counties to the extent that such governments decide to exercise the additional authority conferred by the regulations. The Department of Legislative Services concurs with respect to the impact on the State but disagrees with respect to the impact on local governments; the regulations merely implement Chapters 197 and 198 of 2008. Any fiscal impact has already been accounted for in the fiscal and policy notes for the Chapters 197 and 198 (SB 674/HB 1423) of 2008. The agency's assessment is, however, consistent with the potential impact estimated in the fiscal and policy notes for that legislation. The Department of Legislative Services also notes that, in addition to implementing Chapters 197 and 198, the regulations make several other changes. However, these additional changes merely codify current practices reflected in existing guidelines and, therefore, have no additional fiscal impact.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a minimal beneficial impact on small contractors operating in central Maryland. The Department of Legislative Services concurs that the regulations have minimal or no economic impact on small businesses in Maryland, as they merely implement Chapters 197 and 198 of 2008. However, the fiscal and policy notes for Chapters 197 and 198 characterize the potential impact on small businesses as potential meaningful, rather than minimal. The fiscal and policy notes indicated that there may be a meaningful benefit on contractors, construction businesses, and other services that operate in proximity to a local government that exercises the authority conferred by the regulations. Hydrological contractors may directly benefit by greater demand for specified evaluations required under the regulations for any government that seeks to qualify for utilization of additional water resources. For construction-related businesses and other small businesses, the benefit is more indirect and related to additional development potential made possible by the additional water resources. However, there may also be a meaningful adverse impact (though unlikely) on any small business that faces a concomitant reduction in the availability of water resources.

Contact Information

Legal Analysis: Cristen C. Flynn – (410) 946/(301) 970-5350

Fiscal Analysis: Evan M. Isaacson – (410) 946/(301) 970-5510